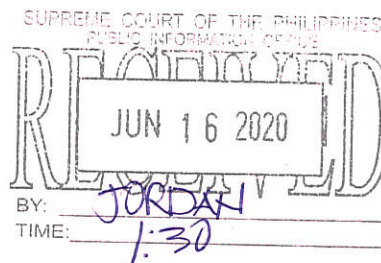




Republic of the Philippines
Supreme Court
Manila



THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated January 13, 2020, which reads as follows:

“**G.R. No. 230550 (*People of the Philippines v. Jonathan Cariño y Tilzon @ Kuya Tom*)**. – This is an appeal from the Decision¹ dated August 24, 2016 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07454 entitled *People of the Philippines v. Jonathan Cariño y Tilzon @ Kuya Tom*. The assailed ruling affirmed with modification the findings of the Regional Trial Court of Dagupan City, Pangasinan, Branch 43 (RTC), which found accused-appellant Jonathan Cariño y Tilzon (Cariño) guilty beyond reasonable doubt of the crime of Statutory Rape.

The Case and the Facts

On May 19, 2014, an Information² was filed charging Cariño with Qualified Rape, committed against AAA,³ his three-year old niece. The Information reads:

That on or about June 3, 2014 at around 10:00 o'clock in the evening at Brgy. Navaluan, Mangaldan, Pangasinan and within the jurisdiction of the Honorable Court, the above-named accused did, then and there, willfully, unlawfully and feloniously inserted his penis inside the vagina of then sleeping AAA, his 3-year old (DOB-29 April 2011) niece who woke up and cried after penetration because of pain, against her will and consent to her damage and prejudice.

¹ Penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justices Amy C. Lazaro-Javier (now a Member of this Court) and Carmelita Salandanan Manahan, concurring; *rollo*, pp. 2-25.

² Records, pp. 1, 13, 25.

³ In line with the Court's ruling in *People v. Cabalquinto*, 533 Phil. 703 (2006), citing Section 40 of A.M. No. 04-10-11-SC on the Rule on Violence Against Women and Their Children and Section 63, Rule XI of the Rules and Regulations Implementing Republic Act No. 9262, otherwise known as the Anti-Violence Against Women and Their Children Act of 2004, the real name of the rape victim will not be disclosed.

Cariño entered a plea of not guilty during arraignment.⁴ Trial on the merits ensued.

The prosecution presented as its witnesses (1) BBB, who is AAA's father, and (2) DDD, who is BBB's niece.

According to BBB, Cariño is his common-law wife's brother who lives in Malabago, Mangaldan with his live-in partner. Cariño sleeps at BBB's house whenever he would quarrel with his live-in partner. On June 3, 2014, Cariño went to BBB's house around 7:00 p.m., woke BBB up, and invited the latter to a drinking spree. At that time, BBB was already drunk while his common-law wife, CCC, was out of the house. BBB and Cariño drank one 2x2 San Miguel liquor at the balcony of BBB's house while BBB's niece, DDD, took care of BBB's three children. Afterwards, BBB slept. BBB only knew about the incident when DDD, who witnessed what happened, told him about it.⁵

DDD testified that she is the 18-year-old niece of BBB. She lives with her parents in a house across BBB's. On June 3, 2014, she was in another aunt's house – some four arms' length away from BBB's house. Her aunt's house is adjacent to BBB's. DDD claimed that she was watching TV when she saw Cariño with his jeans down his thighs and AAA's shorts down the latter's thighs. DDD clearly saw Cariño playing with his penis with AAA in the room of BBB's house. DDD walked toward the wall of BBB's house (approximately two arms' length from Cariño)⁶ to make sure that what she saw was correct. When DDD went back to the chair she was seated on, she saw Cariño insert his penis in AAA's vagina. DDD testified that she clearly saw the incident because BBB's house is a nipa hut with walls made of slatted bamboo and AAA was facing her. DDD initially contemplated whether she would report the incident. Afterwards, she ran towards her mother and told her. They then called the police to report the matter. They also went with the police when the latter arrested Cariño at BBB's house.⁷ At the time the police effected arrest, Cariño was sleeping beside AAA, who were by the door of BBB's house.⁸

The prosecution submitted the following documents: (1) AAA's Certificate of Live Birth;⁹ (2) Police Blotter Entry;¹⁰ (3) Medico-Legal Report¹¹ summarizing the examination of AAA; (4) DDD's Sworn Statement;¹² and (5) Joint Affidavit of Arrest.¹³

⁴ Id. at 40-41.

⁵ TSN, September 17, 2014, pp. 2-15.

⁶ TSN, October 8, 2014, p. 8.

⁷ TSN, September 17, 2014, pp. 16-38.

⁸ Records, p. 4.

⁹ Id. at 11, 23, 35.

¹⁰ Id. at 12, 24, 36.

¹¹ Id. at 9, 21, 33.

¹² Id. at 7, 19, 31.

¹³ Id. at 10, 22, 34.

Cariño denied raping AAA. He alleged that on June 3, 2014, he was in his house in Malabago, Mangaldan, watching TV. Cariño likewise denied knowing AAA and DDD.¹⁴

Aside from Cariño, the defense also presented Cariño's mother who admitted not being present at the time of the incident but went to BBB and CCC's house the day after. She said that AAA acted like nothing happened. The witness also testified that she inspected AAA's vagina.¹⁵

RTC Ruling

In a Decision¹⁶ dated March 19, 2015, the RTC found Cariño guilty beyond reasonable doubt of Statutory Rape under Article 266-A of the Revised Penal Code, as amended by Republic Act No. (R.A.) 8353.¹⁷ Cariño was sentenced to suffer the penalty of *reclusion perpetua* and was ordered to pay AAA ₱75,000.00 each as civil indemnity and moral damages with 6% legal interest on both awards from finality of the decision until full payment.

The RTC found the testimonial and documentary evidence of the prosecution sufficient to prove the crime of statutory rape beyond reasonable doubt. Based on AAA's Certificate of Live Birth, AAA was only three years old at the time of the incident. The trial court also ruled that relationship was likewise proven as Cariño himself admitted that AAA is his niece – being the daughter of his older sister CCC.¹⁸ The RTC explained in detail the reasons why it gave more credence to the prosecution's evidence *vis-à-vis* Cariño's self-serving and uncorroborated defense of denial and alibi. The trial court found DDD's testimony as proof that Cariño raped AAA because of the details given during DDD's direct testimony and the consistency of DDD's testimony despite an exhaustive cross-examination.¹⁹

Aggrieved, Cariño filed a Notice of Appeal.²⁰

CA Ruling

The appellate court ruled that the elements of statutory rape were present. AAA's age (*i.e.*, three years old at the time of the commission of the offense) was proven through AAA's Certificate of Live Birth and through the parties' respective admissions. The identity of the accused and his act of inserting his penis in AAA's vagina were sufficiently proven through DDD's testimony. The CA dismissed Cariño's attempt at discrediting DDD's testimony. The CA held that the RTC Judge herself propounded clarificatory questions to DDD. Cariño's claim (that the medico-legal report should not

¹⁴ TSN, January 14, 2015, pp. 4-5.

¹⁵ TSN, January 26, 2015, pp. 4, 7-8.

¹⁶ Penned by Judge Caridad V. Galvez; records, pp. 62-73.

¹⁷ *Id.* at 73.

¹⁸ *Id.* at 70.

¹⁹ *Id.* at 70-72.

²⁰ *Id.* at 75.

have been admitted for failure to present the physician) was not given much consideration because “medical examinations are merely corroborative in character and not an indispensable element for conviction in rape.”²¹

The CA modified the penalty of *reclusion perpetua* by removing Cariño’s eligibility for parole pursuant to Section 3 of R.A. 9346.²² The appellate court also increased the monetary awards to ₱100,000.00 each as civil indemnity, moral damages, and exemplary damages in accordance with *People v. Jugueta*.²³

Cariño filed a Notice of Appeal.²⁴ Both parties filed their respective Manifestations stating that they are no longer filing a supplemental brief as they are adopting the Briefs they have filed with the CA.²⁵

Issue

The only issue in this case is whether or not the CA erred in affirming Cariño’s conviction for the crime of qualified rape.

Our Ruling

After a careful review of the records of the case, the Court finds the appeal to be without merit. We adopt and affirm the findings of fact of the trial court, as affirmed by the Court of Appeals. The CA correctly found Cariño guilty beyond reasonable doubt of qualified rape under Article 266-A of the Revised Penal Code, as amended. It is worth noting that the CA properly classified the crime as qualified rape (as against the RTC’s use of the term statutory rape.) This Court has clarified that where the circumstances of minority and filial relationship with the accused have been alleged and proved, the crime of statutory rape is raised to qualified rape. In other words, “Qualified Rape is Statutory Rape in its qualified form.”²⁶

The elements necessary in every prosecution for statutory rape are: (1) the offended party is under 12 years of age; and (2) the accused had carnal knowledge of the victim, regardless of whether there was force, threat, or intimidation or grave abuse of authority. It is enough that the age of the victim is proven and that there was sexual intercourse.²⁷ Under Article 266-B of the Revised Penal Code, death penalty shall be imposed in the crime of rape when any of the qualifying circumstances stated therein is present. “[Q]ualifying circumstances are aggravating circumstances, which, by express provision of law, change the nature of the crime to a higher category.”²⁸ Here, a qualifying

²¹ *Rollo*, p. 20.

²² An Act Prohibiting the Imposition of Death Penalty in the Philippines.
²³ 783 Phil. 806, 847 (2016).

²⁴ *CA rollo*, pp. 150-152.

²⁵ See *id.* at 27-28, 36-37.

²⁶ *People v. Barcelá*, 652 Phil. 134, 149 (2010), citing *People v. Gloria*, 634 Phil. 879, 893 (2006).

²⁷ *People v. Ronquillo*, 818 Phil. 641, 648 (2017).

²⁸ *People v. Gloria*, 634 Phil. 879, 893 (2006).

circumstance is present since the victim is three years old and the offender is a relative by consanguinity within the third civil degree. Therefore, the crime committed is qualified rape.

The records revealed that the aforementioned elements of statutory rape are present. First, AAA's age at the time of the commission of the offense is uncontroverted. Her birth certificate, presented and offered in evidence, states that she was born on April 29, 2011. Thus, AAA was only 3 years old at the time she was raped on June 3, 2014. Second, the prosecution proved that Cariño had carnal knowledge of AAA through the DDD's positive, categorical, and spontaneous testimony, corroborated by the medico-legal report, indicating the presence of lacerations in AAA's hymen at the 12:00 and 9:00 position, whitish discharge, and the impression that there was positive evidence of sexual abuse.

Cariño argued that the Medico-Legal Certificate issued by the attending physician of Region I, Medical Center has no probative value because the attending physician did not testify in court.

The Pre-Trial Order²⁹ showed that both parties stipulated on the physical existence of the said medical certificate, admitted by the trial court, and appreciated it as corroborative evidence. While the medical certificate could be admitted in evidence as an exception to the hearsay rule under Section 44, Rule 130 of the Rules of Court, it has little probative value since the examining physician was not presented to testify on her findings. Nevertheless, it cannot be said that the prosecution in this case relied solely on the medical certificate. The non-presentation of the examining physician to testify on her findings and authenticate the medical certificate that she prepared is not sufficient to acquit Cariño.

In many cases, this Court already ruled that a medical certificate is not necessary to prove the commission of rape. It is merely corroborative in character and not an indispensable element in rape.³⁰ The absence of medical findings by a medico-legal officer does not disprove the occurrence of rape. It is enough that the evidence on hand convinces the court that conviction is proper,³¹ as in the instant case.

Lastly, it is well-settled that denial and alibi, if unsubstantiated by clear and convincing evidence, are self-serving and deserve no weight in law.³² DDD's positive identification of Cariño prevails over the latter's bare denial and alibi.

The Court of Appeals correctly modified the penalty by sentencing Cariño to suffer the penalty of *reclusion perpetua* without eligibility for parole

²⁹ Records, pp. 44-45.

³⁰ *People v. Quezada*, 425 Phil. 877, 897 (2002).

³¹ *People v. Turco, Jr.*, 392 Phil. 498, 517 (2000).

³² *People v. Abat*, 731 Phil. 304, 317 (2014), citing *People v. Espinosa*, 476 Phil. 42, 62 (2004).

pursuant to Section 3 of Republic Act No. 9346. The awards of civil indemnity in the amount of ₱100,000.00; moral damages in the amount of ₱100,000.00; and exemplary damages in the amount of ₱100,000.00 were properly imposed pursuant to prevailing jurisprudence.³³ Moreover, the RTC correctly imposed interest at the rate of six percent (6%) *per annum* on all damages awarded from date of finality of this resolution until full payment.³⁴

WHEREFORE, the Court **ADOPTS** the findings of fact and conclusions of law in the Decision dated August 24, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 07454 and **AFFIRMS** the Decision finding accused-appellant Jonathan Cariño y Tizon guilty beyond reasonable doubt of Qualified Rape as defined under Article 266-A(1)(d) in relation to Article 266-B(1) of the Revised Penal Code, as amended by Republic Act No. 8353.

Accused-appellant Jonathan Cariño y Tizon is, likewise, **ORDERED** to pay the victim AAA civil indemnity, moral damages, and exemplary damages in the amount of ₱100,000.00 each. The damages awarded shall earn a six percent (6%) interest *per annum* from the date of finality of this Resolution until full payment.

SO ORDERED.”

Very truly yours,

Mis DDC Bath
MISAEAL DOMINGO C. BATTUNG III
Division Clerk of Court *Jan*
6/4/2020

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(Crim. Case No. 2014-0504-D)

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³³ *People vs. Jugueta*, supra note 23.

³⁴ *Nacar v. Gallery Frames*, 716 Phil. 267, 283 (2013).